



GOVERNMENT OF INDIA

# Chandigarh Administration Gazette

Published by Authority

---

No. 26] CHANDIGARH, TUESDAY, FEBRUARY 25, 2020 (PHALGUNA 6, 1941 SAKA)

---

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

## Notification

The 30th December, 2019

**No. 13/1/9382-HII(2)-2019/21289.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR (PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 23/2017, dated 14.11.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

PRESIDENT/GENERAL SECRETARY, CTU WORKERS' UNION, REGD. NO.415, CHANDIGARH, C/O SHRI D. R. KAITH, CHAMBER NO.104, DISTRICT COURT, SECTOR 43, UNION TERRITORY, CHANDIGARH. (Workers' Union)

AND

DIVISIONAL MANAGER, CHANDIGARH TRANSPORT UNDERTAKING CHANDIGARH. (Management)

referred to the said court by the Chandigarh Administration bearing Endorsement No. 13/1/9382-HII(2)-2017/6637—6640, dated 20.07.2017 :—

## AWARD

1. Below mentioned Reference bearing Endorsement No.13/1/9382-HII(2)-2017/6639, dated 20.07.2017 received from the Secretary Labour, Chandigarh Administration is being disposed of :—

“Whether the demand raised in the demand notice dated 14.09.2013 by President/General Secretary, CTU Worker's Union, Regd. No. 415, Chandigarh, C/o Shri D.R.Kaaith, Chamber No. 104, District Court, Sector 43, Union Territory, Chandigarh And The Divisional Manager, Chandigarh Transport Undertaking, Chandigarh, are genuine and justified. If so, to what effect and to what relief the Union/Workers are entitled to, if any ?”

2. The President/General Secretary, CTU Worker's Union (hereinafter called “workers' union”) had demand notice dated 14.09.2013 in respect of Shri Ashok Kumar—Conductor No. 206, Chandigarh Transport Undertaking, Chandigarh (hereinafter called “workman”) upon the Divisional Manager, Chandigarh Transport Undertaking, Chandigarh (hereinafter called “management”) under Section 2(k) of the Industrial Disputes Act, 1947 (hereinafter called “ID Act”). Upon notice, the workers' union appeared through its representative. Demand notice was ordered to be treated as statement of claim. Case of the workers' union

( 357 )

*This is Digitally Signed Gazette. To verify, visit :  
<https://egazette.chd.gov.in>*

Signature Not Verified  
Digitally signed by  
JATINDER KUMAR  
Date: 2020.02.25  
16:25:18  
Reason: Public Key  
Location:

in brief is that the workman was charge sheeted as per charge sheet dated 16.02.2005 on the allegation that he had not issued the tickets to four passengers after collecting fare from them worth ₹ 32/-. Allegations against the workman were false and manipulated at the instance of checking staff. False report has been made against the workman for the reasons best know to the checking staff. The punishing authority assured the workman that in case he admit his fault he shall be reinstated into service and shall be left with minor punishment. On the assurances of the punishing authority the workman admitted his negligence and had not admitted the embezzlement as the workman was put under suspension and the workman was the only earning member in the family. The punishing authority without giving any show cause notice for proposed punishment straightway passed an order of punishment dated 25.02.2005/02.03.2005 whereby three increments of the workman were stopped with cumulative effect and it was further ordered that the workman shall not be entitled for pay above the subsistence allowance for the period of suspension. Allegations against the workman were totally false and the workman had issued tickets to all the passengers and nobody was travelling without tickets at the time of checking. Statement of the passengers alleged to have been found without tickets was not recorded and cash of the workman was not checked. Against illegal order of punishment the workman filed an appeal but the same was also dismissed as per order dated 30.04.2013/14.05.2013 by non-speaking order. The appellate authority have not considered the grounds of appeal at all and no reasoning have been given for rejection of the same. Ultimately, it is prayed that punishment order dated 25.02.2005/02.03.2005 and order dated 30.04.2013/14.05.2013 passed by the appellate authority be set aside and monetary benefits to the workman along with interest at the rate 12% per annum be released.

3. The management contested the case of the workers' union and filed written statement that during the course of checking, the checking staff detected four passengers travelling without tickets who had boarded the bus from Ropar to Kurali and had paid ₹ 32/- at the rate '8/- each as fare to the workman but the workman did not issue tickets to them. When the checking staff asked the said passengers to pay ten times of the fare, they refused to pay the same by saying that he had paid the fare to the Conductor but he did not issue them tickets. The workman admitted his fault in presence of the passengers and gave un-punched tickets to the checking staff and put his signature on the way bill. The workman was guilty of defrauding ₹ 32/- from the Government revenue which amounts to misappropriation on his part. The workman had given his written confession wherein he admitted his fault and requested that he does not want to face any departmental inquiry and his case may be decided by awarding minimum punishment, which will be acceptable to him and he will not file any appeal against the punishment so awarded and he is giving the confession with his free consent. The workman was called for personal hearing but he did not say anything more than what he had said earlier. Before passing the punishment order the competent authority had afforded full & reasonable opportunity under the provisions of law. The appellate authority had afforded due opportunity to the workman to defend his case during personal hearing before passing the order dated 30.04.2013 / 14.05.2013. During the course of personal hearing the he repeats the pleas taken by him in his appeal and failed to submit any new point of his favour / defence. The appeal was also badly time barred by more than seven years. Other averments of the case of the workers' union were denied and ultimately, it is prayed that the claim of the workers' union be dismissed.

4. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the demand raised in the demand notice dated 14.09.2013 by the workers' union is genuine & justified, if so, to what effect and to what relief the workers' union / workman are entitled to, if any ? OPW
2. Relief.

5. In support of the case, the workers' union examined the workman as AW1. Learned representative for the workers' union closed the evidence. On the other hand, learned Law Officer for tendered into evidence inquiry file of the workman and closed the evidence.

*This is Digitally Signed Gazette. To verify, visit :  
<https://egazette.chd.gov.in>*

6. I have heard the learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

**ISSUE NO. 1 :**

7. Onus to prove this issue was on the workers' union and in order to prove this issue the workers' union examined the workman as AW1, who deposed that he was charge sheeted as per charge sheet dated 16.02.2005 on the allegation that he had not issued tickets to passengers after collecting fare from them worth ₹ 32/-. Allegations against him were false and manipulated at the instance of the checking staff. False report has been made against him. The punishing authority assured him that in case he admits his fault he shall be reinstated into service and left with minor punishment. On the assurance of the punishment authority he admitted his fault and had not admitted the embezzlement because he was under suspension and was only earning member in the family. The charge sheet was admitted with the condition that he shall be left with minor punishment. He further deposed that the punishing authority without giving any show cause notice for the proposed punishment straightway passed the punishment order dated 25.02.2005 / 02.03.2005 whereby three increments of the workman were stopped with cumulative, which is major punishment. It was further ordered that he shall not be entitled for pay over the above the subsistence allowance for the period of suspension. The allegations against him are totally false and he had issued tickets to all the passengers and nobody was travelling without tickets. Statement of passengers alleged to have been found without tickets was not recorded and his cash was not checked. He further deposed that against the illegal order of punishment he filed an appeal which has been dismissed by non-speaking order on 30.04.2013 / 14.05.2013. He requested many times to withdraw the illegal order but the management failed to withdraw the same.

8. Learned representative for the workers' union has vehemently argued that no proper producer has been adopted by the management after alleged confession of guilt. The punishing authority submitted findings of inquiry and has not supplied copy of the same so inquiry was not conducted as per procedure. He has placed reliance on citation **Avtar Singh Versus Punjab State Electricity Board through its Secretary, Patiala, 1992(2) SCT 215 (P&H)(DB)** and **Alpha Toyo Limited Versus Shri Shri Chand Tyagi, 1996(4) SCT 656 (P&H)** and prayed for setting aside punishment order dated 25.02.2005/02.03.2005 and order of the appellate authority dated 30.04.2013/14.05.2013.

9. On the other hand, learned Law Officer on behalf of management tendered into evidence the inquiry file of the workman and closed the evidence on behalf of the management.

10. Learned Law Officer for the management has vehemently argued that the claim alleged in the claim statement is wrong and denied. Order dated 25.02.2005 / 02.03.2005 has been passed by the competent authority after affording due opportunity to the workman. Hence, order is legal and just. He prayed for dismissal of the reference.

11. After giving my careful consideration to the rival contentions of both the parties, I find that it is nowhere disputed that the workman was employed as Conductor No. 206 with the management. The workman was charge sheeted on the allegation that he had not issued the tickets to four passengers after collecting fare from them. The management had passed the order of punishment dated 25.02.2005/02.03.2005 whereby three increments of the workman were stopped with cumulative effect. Thereafter the appeal filed by the workman is also dismissed *vide* order dated 30.04.2013. The grievance of the workman is that allegations are false and manipulated at the instance of the checking staff. False report has been prepared. He had admitted his guilt with the condition that he will be given lesser punishment. But from the perusal of the file inquiry file it is crystal clear that on 17.02.2005 admitted his guilt with the regard to charges levelled against him *vide* charge sheet dated 16.02.2005. He confessed his guilt in writing and simply prayed for awarding him lesser punishment and also submitted that he did not want to go for inquiry. Meaning thereby the workman himself admitted his guilt and the punishment order passed after due to procedure of law and keeping in view the principles of natural justice. The workman cannot say that he simply made confession on the assurance given by the management for lesser punishment whereas he himself admitted the charges levelled against him in the charge. Hence, there is no necessity to conduct proper departmental inquiry and record statement of the departmental witnesses.

There is also no necessity to record the statement of passengers where the workman himself admitted his guilt before the checking staff. Reliance is placed upon the citation titled **State of Haryana Versus Nageshwar, 1987 SLR 384** wherein it was held that Admission of guilt— Delinquent officer admitted his guilt – No further inquiry is necessary before awarding penalty of dismissal.

12. So far as the arguments of learned representative for the workers' union that the punishing authority submitted findings of inquiry and has not supplied copy of the same so inquiry was not conducted as per procedure, is concerned I am convinced with the same as the workman has failed to prove on record what prejudice has been caused to him by non-supply of findings of the punishing authority when he had admitted his guilt in writing before the competent authority after issuance of charge sheet. Reliance is also placed on case **Uttarakhand Transport Corporation (Earlier Known as U.P.S.R.T.C.) & Others Versus Sukhveer Singh, Civil Appeal No.18448 of 2017 decided on 10.11.2017 by Hon'ble Supreme Court of India** wherein it was held that merely non-supply of the inquiry report does not automatically warrant reinstatement of the delinquent employee. It is incumbent upon the delinquent employee to plead and prove that he suffered a serious prejudice due to the non-supply of the inquiry report. Authorities relied upon by learned representative for the workers' union is not applicable to the facts of the present being distinguishable. In the light of discussion made above, the demand raised by the workers' union in the demand notice dated 14.09.2013 is not genuine and justified. Accordingly, this issue is decided against the workers' union and in favour of the management.

**RELIEF :**

13. In the light of findings on the issues above, this reference is declined and answered against the workers' union. Appropriate Government be informed. File be consigned to the record room.

The 14.11.2019.

(Sd.) . . . ,

(ANSHUL BERRY),

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No.PB0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

**Notification**

The 30th December, 2019

**No. 13/1/9378-HII(2)-2019/21258.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR (PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 24/2017, dated 14.11.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

PRESIDENT/GENERAL SECRETARY, CTU WORKERS' UNION, REGD. NO. 415, CHANDIGARH, C/O SHRI D.R. KAITH, CHAMBER NO. 104, DISTRICT COURT, SECTOR 43, UNION TERRITORY, CHANDIGARH. (Workers' Union)

*This is Digitally Signed Gazette. To verify, visit :  
<https://egazette.chd.gov.in>*



AND

DIVISIONAL MANAGER, CHANDIGARH TRANSPORT UNDERTAKING CHANDIGARH  
(Management)

referred to the said court by the Chandigarh Administration bearing Endorsement No.13/1/9378-HII(2)-2017/6645—48, dated 20.07.2017 :—

AWARD

1. Below mentioned Reference bearing Endorsement No.13/1/9378-HII(2)-2017/6647, dated 20.07.2017 received from the Secretary Labour, Chandigarh Administration is being disposed of :—

“Whether the demand raised in the demand notice dated 21.02.2012 by President/General Secretary, CTU Worker’s Union, Regd. No.415, C/o Shri D.R.Kaith, Chamber No. 104, District Court, Sector 43, Union Territory, Chandigarh And The Divisional Manager, Chandigarh Transport Undertaking, Chandigarh, are genuine and justified. If so, to what effect and to what relief the Union/Workers are entitled to, if any ?”

2. The President/General Secretary, CTU Worker’s Union (hereinafter called “workers’ union”) had served demand notice dated 21.02.2012 in respect of Shri Ashok Kumar—Conductor No. 206, CTU, Chandigarh (hereinafter called “workman”) upon the Divisional Manager, Chandigarh Transport Undertaking, Chandigarh (hereinafter called “management”) under Section 2(k) of the Industrial Disputes Act, 1947 (hereinafter called “ID Act”). Upon notice, the workers’ union appeared through its representative. Statement of claim was filed. Case of the workers’ union in brief is that the workman was charge sheeted as per charge sheet dated 15.03.2001 on the allegation that he had not issued the tickets to ten passengers after collecting fare from them worth ₹ 80/-. Allegations against the workman were false and manipulated at the instance of the checking staff for the reasons best know to the checking staff. Without considering the representation of the workman, the punishing authority ordered for appointment of the Inquiry Officer. The Inquiry Officer did not conduct the inquiry in a fair & proper manner and without any material on record held the workman guilty of the charges. The punishing authority issued a show cause notice which was duly replied by the workman but without considering the reply of the workman order of punishment was passed by the Division Manager on 26.10.2005/02.12.2005 and stopped four increments of the workman with cumulative effect and further suspension period was limited to the grant of subsistence allowance only. Against the illegal order of punishment dated 26.10.2005 the workman filed an appeal but the same has also been dismissed as per order dated 14.09.2009/25.09.2009 by non-speaking order. The appellate authority had not considered the grounds of appeal at all and no reasoning has been given for rejection of the same. Two appeals have been decided by common order which is not permissible in law. Order of punishment dated 26.10.2005/02.12.2005 and order of the appellate authority dated 14.09.2009/25.09.2009 are illegal, against the rules and law of natural justice so the same deserves to be set aside on the grounds that false report was made against the workman. He had issued proper tickets to all the passengers. The checking was not conducted as per rules. No report was made on the way bill in accordance with rules and instruction which was mandatory. Further cash of the workman was not checked and no statement of the passengers was recorded. The workman has been punished on the ground that he has given un-punched tickets to the checking staff which is factually incorrect. Way bill and tickets bag were taken by the checking staff before the start of the checking and while returning the same checking staff took away the un-punched tickets without the consent of the workman. The punishing authority relied upon the facts that the workman had failed to produce the passengers who were found without tickets which is against the instruction of the department. The punishing authority failed to appreciate that there is no evidence on record except the statement of Inspectors which is hearsay. The Inquiry officer had not conducted the inquiry as per the rules and fair & proper opportunity was not given to the workman to defend his case. The workman was not given the assistance of co-worker which was mandatory. The Inquiry Officer had not given any findings in support of his conclusion and defence of the workman have not been taken into consideration. Order of punishing authority and appellate authority are non-speaking in nature as they had not given any findings for their conclusion. Ultimately, order dated 26.10.2005/02.12.2005 of the punishing authority and order dated 14.09.2009/25.09.2009 be set aside and the management be directed to pay arrears as denied by virtue of impugned orders.

3. The management contested the case of the workers' union and filed written statement raising preliminary objection that the claim of the workers' union is highly belated. The punishment order was passed in the year 2005 and the present claim is being filed in the year 2017 i.e. after twelve years of cause of action. On merits, it is pleaded that the workman was charge sheeted *vide* Memo No. 4447/DT/TAI/CTU/2001 dated 15.03.2001 for misappropriation of 80/- by way of not issuing tickets. The workman was on duty with bus No.CH-01-G-8170 enroute No.90 on 06.03.2001 and the inspectorate staff checked his bus at Paunta Sahib bridge and found ten passengers without tickets who had boarded the bus at Harbatpur to Paunta Sahib. On enquiry, the passengers replied that they had already paid the fare of 80/- at the rate 8/- each as fare to the workman but the workman had not issued tickets to them. The workman had also admitted his fault verbally before the checking staff and gave un-punched tickets of 80/-denomination of 8/- No.E084976 to 084985 to the Inspectors which were duly attached by the Inspector staff with report. The competent authority rightly ordered to conduct a departmental inquiry against the workman to meet the end of natural justice *vide* office No. 254/DT/TA-I/CTU/2001, dated 08.05.2001 and the Inquiry Officer has conducted the inquiry in a just and fair manner while adopting the canon of natural justice whereby the workman was held guilty of charges. There is no violation of any rules or natural justice. Though the reply to the show cause notice was filed by the workman yet it was not upto mark and satisfactory. Punishment order dated 26.10.2005/ 02.12.2005 whereby four increments of the workman were stopped with cumulative effect and the suspension period was ordered to be limited to the grant of subsistence allowances. The appeal filed by the workman was dismissed by passing a speaking order by the appellate authority and after considering all the facts of the case and his history sheet of the workman. The appeal ought to have been filed after 45 days of the punishment order under the Punjab Civil Services (Punishment & Appeal Rules) but in this case the workman has filed the appeal in the year 2009 which was highly belated too. Punishment order dated 26.10.2005/02.12.2005 and order of the appellate authority dated 14.09.2009/25.09.2009 are fair, just & legal. The checking staff had made a correct report as the workman had not issued tickets to ten passengers who were travelling at the time of checking whereas all the passengers had paid their fare for tickets. Cash of the workman was not checked nor statement of the passengers was recorded as the workman had admitted his fault at the time of checking. A detailed and speaking order has been passed by the competent authority after considering all the facts & record of the case. The Inspectors, who made the report against the workman, were made the prosecution witnesses in the charge sheet who appeared in the departmental proceedings and deposed their testimony against the workman. The evidence of the prosecution witnesses was duly supported by version of the prosecution. The workman was also afforded opportunity to tender his evidence in his defence, which he duly availed. Other averments of the claim of the workers' union were denied and ultimately, it is prayed that the claim of the workers' union be dismissed.

4. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the demand raised in the demand notice dated 21.02.2012 by the workers' union is genuine & justified, if so, to what effect and to what relief the worker's union / worker is entitled to, if any ? OPW
2. Whether the claim of the workers' union is bad on account of delay & laches ? OPM
3. Relief.

5. In support of the case, the workers' union examined the workman as AW1. Learned representative for the workers' union closed the evidence. On the other hand, learned Law Officer for the management tendered into evidence inquiry file of the workman and closed the evidence.

6. I have heard learned representative for the workers' union and learned Law Officer for the management have gone through the file carefully. My findings on the issues framed in this case are as follows :—

**ISSUE NO. 1 :**

7. Onus to prove this issue was on the workers' union and to discharge the same the workers' union examined the workman as AW1, who deposed that he was charge sheeted as per charge sheet dated 15.03.2001 on the allegation that he has not issued the tickets to ten passengers after collecting fare from them worth 80/-. False report has been made against him for the reasons best know to the checking staff. Without considering his representation, the punishing authority ordered for appointment of the Inquiry Officer, who did not conduct the inquiry in a fair & proper manner and without any material on record held him guilty of the charges. He further deposed that the punishing authority had issued a show cause notice which was duly replied by him but without considering his reply order of punishment was passed by the Division Manager on 26.10.2005 / 02.12.2005 and stopped his four increments with cumulative effect and further suspension period was limited to the grant of subsistence allowance only. He deposed that against the illegal order of punishment dated 26.10.2005 he filed an appeal but the same was dismissed as per order dated 14.09.2009/25.09.2009 by non-speaking order. The appellate authority have not considered the grounds of appeal at all and no reasoning have been given for rejection of the same. Two appeals have been decided by common order which is not permissible in law. He further deposed that the checking was not conducted as per rules and no report was made on the way bill in accordance with rules & instruction which was mandatory and his cash was not checked and no statement of the passengers was recorded despite compulsory instructions to avoid false implications of the Conductors. The way bill and tickets bag were taken by the checking staff from him before start of the checking and while returning the same checking staff took away the un-punched tickets without his consent. The Inquiry Officer had not conducted the inquiry as per the rules and fair & proper opportunity was not given to him to defend his case and he was not given the assistance of co-worker.

8. Learned representative for the workers' union has agued that false report has been made against the workman by the checking staff and checking was not conducted by the checking staff as per the departmental instructions. No report was made on the way bill. No statement of the passengers was recorded and no cash of the workman was checked. He argued that the punishing authority relied upon the facts that the workman had failed to produce the passengers. There is no evidence record so statement of the Inspector is hearsay. The Inquiry Officer has not given findings in support of his conclusion and order of punishing authority and the appellate authority is non-speaking in nature. He prayed for setting aside the punishment order dated 26.10.2005/02.12.2005 and order of the appellate authority dated 14.09.2009/25.09.2009 and allowing of the reference.

9. On the other hand, learned Law Officer for the management tendered into evidence inquiry file of the workman and closed the evidence.

10. Learned Law Officer for the management has argued that the workman was charge sheeted for mis-appropriation of ₹ 80/- from the Government revenue by not issuing the tickets to the passengers after collecting the fare. A regular inquiry was ordered and he was afforded reasonable opportunity to defend his case during the inquiry proceedings. The charges levelled against the workman stands proved. The findings of the Inquiry Officer were supplied to the workman but he did not submit his reply. He was also given opportunity of personal hearing to defend his case. The competent authority after considering all the facts of the case ordered to stop four increments with cumulative effect of the workman *vide* this office order dated 26.10.2005/ 02.12.2005. He further argued that the workman filed an appeal before the appellate authority on 04.02.2008 i.e. after three years of cause of action. The appeal of the workman was dismissed by the appellate authority by passing order dated 14.09.2009/25.09.2009 being devoid of any merit. He prayed for dismissal of the reference.

11. After giving my thoughtful consideration to the rival contentions of both the sides, I find that admittedly the workman was working as Conductor and he was charge sheeted on the allegation that he had defrauded ₹ 80/- from the Government revenue which amounts to gross misappropriation on his part. Now the main contention of learned representative for the workers' union is that the punishing authority has failed to appreciate that there is no evidence on record except the statement of Inspectors. I have gone through the inquiry file and perusal of the same reveal that firstly the workman was charge sheeted on 15.03.2001 for misappropriation of ₹ 80/- by way of not issuing the tickets to ten passengers at the rate ₹ 8/- each after collecting the fare from them. The workman filed the reply to the charge sheet denying the charges. The departmental inquiry was ordered by the competent authority by appointing the Inquiry Officer. Thereafter the Inquiry Officer recorded the preliminary statement of the workman. Statement of the prosecution witnesses were recorded in the presence of the workman and his co-workers. The prosecution witnesses were duly cross-examined by the workman through his co-worker. The workman also lead the evidence his defence and examined himself as his defence witness. Thereafter the Inquiry Officer after going through the statements of prosecution witnesses and defence statement of the workman proved the charges against the workman. Copy of the inquiry report was supplied to the workman to make representation, if any. But he did not submit any representation. The competent authority also gave the opportunity of personal hearing to the workman and the competent authority after considering all the facts & circumstances of the case ordered stoppage of four increments of the workman with cumulative effect and limited the suspension period to grant of subsistence allowance only *vide* order dated 26.10.2005. Thereafter the workman filed the appeal before the appellate authority and appeal of the workman was dismissed *vide* order dated 14.09.2009. Further cross-examination of the workman as AW1 is very important wherein he admitted that it is correct that he was chargesheeted on 15.03.2001 and he was on duty with bus No.CH-01-G-8170 on route No. 90. He also admitted that it is correct that after charge a departmental inquiry was conducted. He stated that he was given full opportunity during the departmental inquiry by the Inquiry Officer and he was called for personal hearing. He also filed an appeal against the punishment order which was also dismissed and he was heard by the appellate authority properly and after dismissal of the appeal he had not filed any appeal before the second appellate authority.

12. In the light of discussion made in foregoing paragraph of this award and cross-examination of the workman, it is proved on record that the inquiry conducted against the workman is fair & proper. Further authority **State Bank of Bikaner & Jaipur Versus Nemi Chand Nalwaya, 2011 LLR 634 (SC)** is guiding star as to when the Labour Court can interfere in the findings of inquiry. In this case the Hon'ble Supreme Court was pleased to hold as under :—

“6. It is now well-settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, *mala fide* or based on extraneous considerations.”

In the light of authority, the Labour Court can interfere only if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, *mala fide* or based on extraneous considerations but there is no such occasion in the present case as fair and proper opportunity has been granted to the workman. Accordingly, this issue is decided against the workers' union and in favour of the management.



**ISSUE NO. 2 :**

13. Onus to prove this issue was on the management but learned representative for the management has not pressed this issue during the course of arguments. This issue is decided against the management being not pressed.

**RELIEF :**

14. In the light of findings on the issue No.1 above, this reference is declined and answered against the workers' union. Appropriate Government be informed. File be consigned to the record room.

The 14.11.2019.

(Sd.) . . . . ,  
(ANSHUL BERRY),  
PRESIDING OFFICER,  
Industrial Tribunal & Labour Court,  
Union Territory, Chandigarh.  
UID No.PB0095.

**CHANDIGARH ADMINISTRATION****LABOUR DEPARTMENT****Notification**

The 30th December, 2019

**No. 13/1/9387-HII(2)-2019/21284.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947), read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR (PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 20/2017, dated 19.11.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

PRESIDENT/GENERAL SECRETARY, CTU WORKERS' UNION, REGD. NO. 415, CHANDIGARH, R/O HOUSE NO. 1828/A, SECTOR 43-B, CHANDIGARH. (Workers' Union)

AND

DIVISIONAL MANAGER, CHANDIGARH TRANSPORT UNDERTAKING –CUM- DIRECTOR TRANSPORT, CHANDIGARH. (Management)

referred to the said court by the Chandigarh Administration bearing Endorsement No.13/1/9387-HII(2)-2017/6665—68, dated 20.07.2017 :—

**AWARD**

1. Below mentioned Reference bearing Endorsement No.13/1/9387-HII(2)-2017/6667, dated 20.07.2017 received from the Secretary Labour, Chandigarh Administration is being disposed of :—

“Whether the demand raised in the demand notice dated 02.06.2015 by President/General Secretary, CTU Workers Union, Regd. No.415, Chandigarh, R/o House No.1828/A, Sector 43-B, Chandigarh And (1) The Divisional Manager, Chandigarh Transport Undertaking-cum-Director Transport, Chandigarh, are genuine and justified. If so, to what effect and to what relief the Union/Workers are entitled to, if any ?”

2. The President/General Secretary, CTU Workers Union (hereinafter called “workers' union”) had served demand notice dated 02.06.2015 in respect of Shri Surinder Singh – Ex-driver No.82, Chandigarh Transport Undertaking (hereinafter called “workman”) upon the Divisional Manager, Chandigarh Transport Undertaking-cum-Director Transport, Chandigarh (hereinafter called “management”) under Section 2(k) of the Industrial Disputes Act, 1947 (hereinafter called “ID Act”). Upon notice, the workers' union appeared

through its representative. Demand notice was ordered to be treated as statement of claim. Case of the workers' union in brief is that the workman had joined as Driver on 13.06.1969 and had retired from service on 30.06.2001 on superannuation. Chandigarh Administration adopted the Punjab pay scale as per notification dated 13.01.1992 which were made applicable with effect from 01.01.1986. The State of Punjab further amended the pay scales with effect from 01.01.1996 which were also adopted by Chandigarh Administration. The State of Punjab further issued instructions dated 25.09.1998 whereby State of Punjab granted assured career progression scale (hereinafter called 'ACP scale') to those employees who have not got any promotion and promotional pay scale on completion of 8, 16, 24 and 32 years of service and these instructions were also adopted by Chandigarh Administration *vide* letter No.8446-IH(7)-98/25550 dated 17.12.1998. The workman had joined the services on 13.06.1969 and had not got any promotion as such he was granted assured career progression grade (hereinafter called 'ACP grade') on completion of 8 years and 16 years of service but was not granted ACP grade on completion of 24 years of service. The workman had completed 24 years of satisfactory service on 14.05.1996 so he is entitled for ACP grade on completion of 24 years of service. Service record of the workman remained good through out and he was never conveyed any adverse annual confidential report (hereinafter called 'ACR') through out his service career and if any adverse ACR and average ACR are not conveyed to the employee the same is to be considered as good for the purpose of promotion and promotional pay scale. During his service tenure, the workman was never conveyed about the denial of his claim for ACP scale on completion of 24 years of service. The workman made representation which was kept pending and claim of the workman was lastly rejected as per letter dated 12.11.2013. In similar manner department also denied ACP grade on completion of 24 years service to Shri Paramjit Singh-Ex-Driver No. 117 and Shri Prem Singh-Ex-Driver No.128 and both these drivers filed demand notice which was referred to this Court for adjudication and was registered as IDR No.260 of 2005, that reference was decided in favour of both these Drivers as per award dated 10.01.2010. The workman is also entitled to ACP grade on completion of 24 years with effect from 14.05.1996 and is also entitled for revision of pension and pensionary benefits in consequence to refixation of pay in the same manner it has been granted to Shri Paramjit Singh and Shri Prem Singh. Ultimately, it is prayed that the ACP grade/scale with effect from 14.05.1996 on completion of 24 years of service against the same post be granted to the workman and his pay, pension & pensionary benefits be revised and arrears of pay, pension and pensionary benefits be paid to the workman along with interest at the rate of 12% per annum from the date of accrual of the same till its realization.

3. The management contested the case of the workers' union and filed written statement raising preliminary objection that the case of the workman for grant of proficiency step-up on completion of 24 years of service was considered by the competent authority and it was found that the workman was not holding the satisfactory record so as to enable him to get benefit under the instructions dated 03.05.2000. On merits, it is pleaded that the workman is not entitled to get benefit of ACP on completion of 24 years service as he was not having good up to mark service record during the period of his service. Instructions dated 03.05.2000 issued by Chandigarh Administration are very clear that the official must have the satisfactory service for granting the benefit of ACP and at least his 50% ACRs should be good and further two out of last three also should be good. The instructions are mandatory instructions and the management is bound by the same that is why the workman was not granted the benefit of ACP after completion of 24 years of his service. Service record of the workman was not satisfactory and during the period of service his 20 ACRs were average and only 5 were good out of 25 and his service record is not up to the mark as per instruction dated 10.01.2000 issued by Government of Punjab, Department of Personnel *vide* No. 7/1/99-5PP-I/395 adopted by Chandigarh Administration *vide* letter dated 03.05.2000. No record of ACR was conveyed to the workman as it was not necessary to intimate the same to him and only those ACRs are intimated to the official which came under the remarks 'below average'. Shri Paramjit Singh-Ex-Driver No.117 and Shri Prem Singh - Ex-Driver No. 128 were granted the benefit of ACP grade on completion of 24 years service but it does not mean that the workman is also entitled to the same benefit. Facts of the case of the workman are different to the case of Shri Paramjit Singh and Shri Prem Singh. Ultimately, it is prayed that the claim of the workers' union be dismissed.

4. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the demand raised in the demand notice dated 02.06.2016 by the workers' union is genuine & justified, if so, to what effect and to what relief the workers' union/workman are entitled to, if any ? OPW
2. Relief.

5. In support of the case, the workers' union examined the workman as AW1. The workman closed the evidence. On the other hand, the management examined Smt. Jyoti Sareen as MW1. Learned Law Officer for the management closed the evidence.

6. I have heard learned representative for the workman and learned Law Officer for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

#### ISSUE NO. 1 :

7. Onus to prove this issue was on the workers' union and to discharge the same learned representative for the workers' union examined the workman as AW1, who deposed that he joined the management as Driver on 13.06.1969 and had retired from service on 30.06.2001 on superannuation. Chandigarh Administration adopted the Punjab Pay scales as per notification dated 13.01.1992 which were made applicable with effect from 01.01.1986. The State of Punjab amended the pay scale with effect from 01.01.1996 which were also adopted by Chandigarh Administration. The State of Punjab further issued instructions dated 25.09.1998 whereby ACP scale was granted to the employees who have not got any promotion and promotional pay scale on completion of 8, 16, 24 & 32 years of service and the same instructions were also adopted by Chandigarh Administration as per letter No.8446-IH(7)-98/25550 dated 17.12.1998. Copy of instruction is Mark 'A'. He further deposed that he joined the service on 13.06.1969 and have not got any promotion and promotional pay scale throughout his service so he was granted ACP grade on completion of 8 & 16 years of service but has not been granted ACP on completion of 24 years of service with effect from 14.05.1996. He further deposed that his service record remained good through out and he was never conveyed any adverse ACR throughout his service career. If any adverse ACR and average ACR are not conveyed to the employee the same is to be considered as good for the purpose of promotion and promotional pays scale so denial of ACP grade on completion of 24 years of service to him is illegal and against the rules. He further deposed that during his services tenure he was never conveyed about the denial of his claim for ACP grade on completion of 24 years of service. He made representation which were kept pending and his claim was lastly rejected as per letter dated 12.11.2013. He further deposed that in similar manner the management also denied ACP grade on completion of 24 years of service to Shri Paramjit Singh – Ex-Driver No. 117 & Shri Prem Singh – Ex-Driver No. 128 and both of them through workers' union raised their dispute and the same dispute was registered as IDR No. 260 of 2005 before this Court and the said IDR was decided in favour of workers' union *vide* award dated 10.01.2010 and the management was directed to grant the ACP grade to the workmen. He argued that workman is also entitled for ACP grade on completion of 24 years of service with effect from 14.05.1996 and for revision of pension and pensionary benefits in consequence to fixation of pay in the same manner it has been granted to Shri Paramjit Singh and Shri Prem Singh. Copy of award Mark 'B'.

8. Learned representative for the workers' union has argued that action of the management is illegal, devoid of merits and against the law as average ACRs were never conveyed to the workman and it is a settled law that if adverse or average ACR were not conveyed to the employee within a reasonable time then the said report could not be used against the interest of the workman. Learned representative for the workers' union has relied upon authorities **Sukhdev Singh Versus Union of India & Others, 2013(9) SCC 566** and **Dr. Gurdev Singh Bhardwaj Versus State of Punjab & Others, 2012(4) SCT 635 (P&H)** and prayed for grant of ACP grade to the workman on completion of 24 years with effect from 14.05.1996 and fixation of pay and pension of the workman and for release of consequential benefits thereof.

9. On the other hand, learned Law Officer for the management examined Smt. Jyoti Sareen – Senior Assistant as MW1, who deposed that the workman had already been allowed increments on completion of 8 and 16 years of service as per instructions of Chandigarh Administration. The case of the workman for grant of proficiency step up on completion of 24 years of service was considered by the competent authority and it was found that the workman was not holding satisfactory record so as to enable him for grant of benefit under the instructions dated 03.05.2000, as per which 50% of ACRs of the official should be good and further two out of the last three should also be good. She deposed that in service career of 20 years 17 ACRs of the workman were average and 5 ACRs of the workman were good as such he was not holding 50% good ACRs. As per instruction dated 10.01.2000 issued by the Government of Punjab Department of Personnel *vide* No.7/1/99-5PP-I/395 which were later on adopted by Chandigarh Administration *vide* letter dated 03.05.2000. No record of ACR was conveyed to the workman as it was not necessary to intimate him. Only those ACRs are intimated to the employee which come under the remarks ‘Below Average’. She further deposed that Shri Paramjit Singh–Ex-Driver No. 117 and Shri Prem Singh–Ex-Driver No. 128 have been granted the benefit of ACP grade on completion of 24 years but it does not mean that the workman is also entitled for the same. Facts of the case of the workman are different to the case of Shri Paramjit Singh and Shri Prem Singh.

10. Learned Law Officer for the management has argued that the workman is entitled for ACP benefit on completion of 24 years of service. As per instruction of ACP scheme the official who have 50% good ACRs and have 2 good ACRs out of last three is entitled for grant of ACP benefits. He argued that in 25 years of service 20 ACRs of the workman were average and 5 ACRs were good so he was not holding 50% ACRs good which was mandatory requirement to earn proficiency step up. He argued that no record of ACR was conveyed to the workman as it was not necessary to intimate him and only those ACRs are intimated to the official which come under the remarks ‘Below Average’. The facts of the case of the workman are different to the case of Shri Paramjit Singh and Shri Prem Singh. He prayed for dismissal of the reference.

11. I have very thoughtfully considered the rival contention of both the sides. It is undisputed that notification was adopted by Chandigarh Administration. In the present case, the workers’ union is aggrieved that the workman was not granted ACP grade on completion of 24 of service without any basis and ACRs on which the management is relying upon were never conveyed to the workman. On the other hand, it is the stand of the management that as per notification dated 03.05.2000, any official can avail the benefit of ACP grade only if his / her 50% ACRs are good and further out of the last three two are good. Now this Court is to see whether the management was justified in not granting the ACP grade to the workman on completion of 24 years of service or not. Now only ground on the basis of which benefit of ACP grade on completion of 24 years of service was denied to the workman is that the workman had 20 average ACRs during the service of 25 years. There is nothing on record to suggest that average reports were conveyed to the workman. Even the management’s witness while stepping into the witness box as Smt. Jyoti Sareen – Senior Assistant, MW1 has admitted that it is correct that they had not granted the ACP scale to the workman on completion of 24 years of service and they have not conveyed the same to the workman. I have gone through the authority **Sukhdev Singh Versus Union of India & Others** (*supra*) relied upon by learned representative for the workers’ wherein Hon’ble Supreme Court of India was pleased to hold as under :—

- “8. In our opinion, the view taken in Dev Dutt that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and gave better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR – poor, fair, average, good or very good – must be communicated to him/her within a reasonable period.”



and in authority **Dr. Gurdev Singh Bhardwaj Versus State of Punjab & Others** (*supra*) wherein Hon'ble Punjab & Haryana High Court was pleased to hold as under :—

- “12. Following the dictum laid down by the Apex Court, it is clear that the average report relating to the year 2005-06 which clearly had an adverse effect insofar as consideration of the petitioner for purposes of promotion to the higher post of Senior Medical Officer, was required to be conveyed to him. Accordingly, it is held that the ACR for the year 2005-06 having not been communicated to the petitioner was liable to be ignored while determining the bench mark.”

Further as pointed out by learned representative for the workers' union, the then Presiding Officer of this Court *vide* award dated 10.01.2010 in IDR No.260 of 2005 had directed the management to grant the ACP grade to similarly situated workmen and this fact has also not been controverted by the management and has not been argued by learned Law Officer for the management that the case of the present workman is on different footings then to those who were granted relief by the then Presiding Officer. Cumulative effect of my above discussion is that since the average ACRs were not conveyed to the workman the same cannot be used against him as such he has been wrongly denied the benefit of ACP grade on completion of 24 years of service. In the light of discussion made above, authorities relied upon and award dated 10.01.2010 passed by the then Presiding Officer of this Court, the demand raised in the demand notice dated 02.06.2015 by the workers' union is genuine and justified as such the management is directed to grant ACP grade to the workman after completion of 24 years of service and re-fix the pay & pension of the workman and to release the consequential benefits to the workman thereof. This issue is decided in favour of the workers' union and against the management.

#### **RELIEF :**

12. In the light of findings on the issue above, this reference is allowed and answered in favour of the workers' union. The workman is entitled for grant ACP grade after completion of 24 years of service and re-fixation of his pay & pension and consequential benefits thereof. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . .,

(ANSHUL BERRY),

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No.PB0095.

The 19.11.2019.

## CHANDIGARH ADMINISTRATION

## LABOUR DEPARTMENT

**Notification**

The 2nd December, 2019

**No. 13/1/9679-HII(2)-2019/19298.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 83/2014, dated 22.10.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between:

RANDHAWA, HOUSE NO. 3, BLOCK 'D', COLONY NO.4, INDUSTRIAL AREA, CHANDIGARH (Workman)

AND

ASHWANI AUTOMOBILE PRIVATE LIMITED, PLOT NO. 181/3-B, INDUSTRIAL AREA, PHASE-I, CHANDIGARH (Management)

## AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that he was appointed as Fitter on 07.11.2006 and remained in the uninterrupted employment upto 21.03.2014 when his services were illegally & wrongly terminated by refusing work. The workman was drawing Rs. 7,000/- per month as wages. On 21.03.2014 at about 8:00 P.M. the workman was informed telephonically that his services are no more required and he needs not to come on duty from the next day i.e. 22.03.2014. When he asked for the reason of termination, he was informed that there is an order of Director. The workman visited the factory after the termination but he was refused work. He contracted the Director, who also refused work to him. For his reinstatement the workman lodged a complaint with the Labour Inspector, Union Territory, Chandigarh on 24.03.2014. The Labour Inspector fixed a number of dates for an amicable settlement but the management refused to take the workman back on job. The workman then served upon the management a demand notice dated 18.06.2014. The management did not reply the demand notice. The Conciliation Officer, Union Territory Chandigarh was requested for his intervention into the matter. The Conciliation Officer fixed a number of dates for an amicable settlement but the management did not appear before the Conciliation Officer on any date. Refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25-F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. Action of the management in terminating the services of the workman is illegal, wrongful, motivated, against the principles of natural justice and unfair labour practice. Ultimately, it is prayed that the workman be reinstated with continuity of service and full back wages as the workman remained unemployed during the period i.e. from the date of termination to till date.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the worker does not fall under the definition of 'workman' as defined under Section 2(s) of the ID Act. On merits, it is pleaded that the worker joined the duty on 07.11.2009. At the time of leaving the job without any intimation, the worker was getting Rs. 6,800/- per month salary. The workman has filed the false claim and concocted a false story just to harass the management and to abstract money. The workman had at his own left the job on 22.03.2014 without any intimation to the management. The worker lodged a complaint with the Labour Inspector, Chandigarh. Before the Labour Inspector the management had appeared and made the offer to come back on duty but the worker refused to join the

duty. The management is still ready to take back the worker on duty, if he desire but without back wages and subject to his furnishing an undertaking that he is not gainfully employed anywhere else. No notice was served upon the management. On receipt of notice the management appeared before the Conciliation Officer, Chandigarh and offer the worker to come back on duty but the worker refused for the reason best know to him. The management had not violated the provisions of the ID Act. The worker is neither entitled for reinstatement with continuity of service nor further entitled for full back wages due to his wrong acts. The latest employee detail of ESI show that the worker is doing job and is getting more than Rs. 8,000/-. Other averments of the case of the workman were denied and ultimately, it is prayed that claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether Shri Randhawa is not a 'workman' as defined under Section 2(s) of the ID Act ? OPM
2. Whether the services of Shri Randhawa were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
3. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Shri Ramesh Sood as MW1. Learned representative for the management closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows:—

#### **ISSUE No. 1 & 2:**

7. Onus to prove issue No. 1 was on the management whereas onus to prove issue No. 2 was on the workman but both these issues are taken up together to avoid repetition of discussion. Learned representative for the workman has examined the workman as AW1 and deposed that he was appointed as Fitter on 07.11.2006 and remained in uninterrupted employment upto 21.03.2014 and his services were terminated by refusing of work and he was drawing Rs. 7,000/- per month as wages. On 21.03.2014 he was telephonically informed that his services are no more required and he need not to come on duty from the next day i.e. 22.03.2014 then he lodged a complaint with the Labour Inspector, who fixed number of dates for an amicable settlement but the management refused to take him back on job. He also served upon the management a demand notice but the management did not file reply. He further deposed that refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. No charge sheet was issued and no inquiry was held and he was not paid retrenchment compensation at the time of termination and he remained unemployed during that period i.e. from the date of termination to till date so termination is illegal, wrong, motivated, against the principles of natural justice and unfair labour practice.

8. Learned representative for the workman has argued that Shri Randhawa is a 'workman' as defined under Section 2(s) of the ID Act as he was appointed as Fitter and drawing Rs. 7,000/- per month as wages. The workman was not having any managerial or supervisory duties so as to exclude him from the definition of the 'workman' as defined under Section 2(s) of the ID Act. He further argued that the workman was refused work and refusal of work amounts to termination is retrenchment under Section 2(oo) of the ID Act. The management had violated the provisions of Section 25-F of the ID Act as no charge sheet was issued, no inquiry was held and he was not paid retrenchment compensation at the time of termination. He prayed for reinstatement of the workman with continuity of service and full back wages.

9. On the other hand, learned representative for the management examined Shri Ramesh Sood as MW1, who deposed that statement of claim of the worker is not maintainable as the workman had not approached with clean hands and worker does not fall under the definition of 'workman' as defined under Section 2(s) of the ID Act. The workers joined the duty with the management 07.11.2009 and on 22.03.2014 at the time of leaving without any intimation the worker was getting Rs. 6,800/- per month as salary. The workman had filed the false statement of claim and levelling false allegation against the management. The management has not violated the provisions of the ID Act as the worker has left the job without any intimation as he had got the better employment in Berklay Hyundai and getting Rs. 8,000/- per month as salary. The workman is not entitled for full back wages due to his own wrongs.

10. Learned representative for the management has argued that the worker did not fall under the definition of 'workman' as defined under Section 2(s) of the ID Act. The workman had filed the false claim statement and concocted a false story just to harass the management and to abstract money. Argument not workman not terminated left the job. The services of the workman were never terminated by the management rather the worker at his own left the job on 22.03.2014 without any intimation to the management as he had got better job. He prayed for dismissal of the present industrial dispute.

11. After giving my carefully consideration to the rival contentions of both the sides, I find that the management has simply stated that the worker does not fall under the definition of 'workman' as under Section 2(s) of the ID Act. Let us peruse the definition of the workman:—

*"2(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical operational, clerical thousand rupees] per mensem or exercises, either by or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceedings under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—*

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 46 of 1950), or the Navy Act, 1957 (62 of 1957); or*
- (ii) who is employed in the police service or as an officer or other employee of a prison; or*
- (iii) who is employed mainly in a managerial or administrative capacity; or*
- (iv) who, being employed in a supervisory capacity, draws wages exceeding [ten the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature]."*

Diverting to the present case admittedly the workman is Fitter and drawing Rs. 7,000/-. Onus was on the workman in order to prove the same the workman himself deposed that he was appointed on 07.11.2006 and remained in interrupted employment of the management till 21.03.2014. Admittedly the workman was employee of management. Date of joining of the workman is disputed by the management by stating that the workman had joined the management on 07.11.2009 but however joining of the workman with the management is no where disputed.

12. As regards date of leaving is concerned admittedly the workman was no more in service after 21.03.2014. As per averments of the workman he was terminated by the management whereas the management is stating that the worker had left the job with his own will but the management had failed to prove this fact on the file that the worker had left the job of his own level as the management had not placed and proved on record any document/notice whereby it can be ascertained that the workman was called upon to join duty. Admittedly the workman had worked for such a long period and it does not sound



to prudent mind that the workman who had served the management for such a long period suddenly abandoned his services without any cause or reason. Moreover, abandoning the job/leave the job without any intimation is also a misconduct for which issuance of show cause notice and conducting of inquiry is must. Whereas in the present case no notice or show cause notice was issued to the workman or any inquiry was conducted for leaving the job without any intimation. It is not the case of the management that it has conducted any inquiry with regard to abandonment of duties by the workman. In the light of discussion made above, the management has failed to rebut the claim of the workman that his services were terminated illegally by the management. It is proved on record that the services of the workman were terminated illegally by the management which entitles him reinstatement into service but admittedly M/s Ashwani Automobile i.e. the present management has been closed as the workman while stepping into the witness box as AW1 has admitted that M/s Ashwani Automobile has been closed so reinstatement of the workman cannot be possible. Keeping in view the facts & circumstances of the case, ends of justice would be met if the workman is compensated with lump sum compensation of Rs. 50,000/-. Accordingly, both these issues are decided in favour of the workman and against the management.

**RELIEF:**

13. In the light of findings on the issues above, this industrial dispute is allowed. The workman is entitled for compensation of Rs.50,000/-. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

Dated: 22-10-2019.

(Sd.). . . . ,  
(ANSHUL BERRY),  
PRESIDING OFFICER,  
Industrial Tribunal & Labour Court,  
Union Territory, Chandigarh.  
UID No.PB0095.

**CHANDIGARH ADMINISTRATION****LABOUR DEPARTMENT****Notification**

The 2nd December, 2019

**No. 13/1/9681-HII(2)-2019/19304.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 30/2015, dated 21.10.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

KALINDA (PEON) W/O SHRI PRALHAD MUNDE, R/O HOUSE NO. 1865, SECTOR 15, PANCHKULA, HARYANA (Workman)

AND

1 D.A.V MODEL SCHOOL MANAGING COMMITTEE, CHITRA GUPTA ROAD, PAHAR GANJ, NEW DELHI-110055 THROUGH ITS PRESIDENT/SECRETARY.

2 D.A.V MODEL SCHOOL, SECTOR 15-A, UNION TERRITORY, CHANDIGARH THROUGH ITS PRINCIPAL.

3 D.A.V MODEL SCHOOL, SECTOR 15-A, UNION TERRITORY, CHANDIGARH THROUGH ITS MANAGER(Management)

#### AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that she joined the services of the management with effect from 19.12.2007 as Peon in its school i.e. D.A.V. Model School, Sector 15-A, Union Territory, Chandigarh. She was made to join as *ad hoc* employee for one year and then her services were regularised by the management. She was dismissed from service of the management *vide* order No. 387/P-92/2014-15, dated 30.09.2014. The workman had completed more than six years nine months and eleven days of her continuous service without any break or interruption. She had completed 240 days of service in every calendar year so her services cannot be terminated/dismissed without holding proper inquiry. The domestic inquiry conducted by the management is not proper as the workman was not provided proper assistance of a professional trade union leader to which the workman was associated nor the workman was provided assistance of any co-employee as her assistant, which has prejudiced the entire proceedings and vitiated the inquiry. Even the conclusion/findings arrived by the Inquiry Officer has no basis. The Inquiry Officer was not fair in its approach and was biased against the workman and in favour of the management as the management has engaged him on payment of heavy fees to give a finding of guilt against the workman and held the charges to be proved without any basis and the Inquiry Officer in its zeal to give a finding of guilt against the workman and in favour of the management refused to take the assistance of a professional trade union leader, which resulted in denial of natural justice to the workman. If the Inquiry Officer would have allowed the workman to take the assistance of the professional trade union leader then the professional trade union leader would have used his expertise to crack the witnesses of the management and bring out the falsehood of the allegations. The professional trade union leader was in a position with his experience to help the workman in the inquiry proceedings and cross-examine the witnesses of the management properly. Without assistance of the trade union leader the workman was not in a position to defend herself being laywoman and ignorant of legal procedure and unable to face the inquiry for the first time. The Inquiry Officer misinterpreted the authority of Hon'ble Supreme Court in **Bharat Petroleum Corporation Limited Versus Maharashtra General Kamgar Union & Others** to restrict/stop the assistance of a professional trade union leader. In Union Territory Chandigarh, the Home Secretary *vide* its notification No.8/4-411(8)-77/3696, dated 22.02.1978 has notified in the service rules applicable to the Union Territory, Chandigarh industries to which the management also falls that a member/office bearer of a trade union to which the workman is associated is not an outsider and is permitted to assist/take part in the domestic inquiry proceedings. The Hon'ble Supreme Court in its above judgement has stated that if the service rules specifically provide then the assistance of a trade union leader can be taken. Order of dismissal dated 30.09.2014 is liable to be set aside as the charges are vague, baseless and has been levelled as a ploy to dismiss the workman. The workman was punished twice for the same set of charges as her salary for the alleged period was deducted and she cannot be punished again and again for the same charges. The workman is victim of double jeopardy. The punishment of dismissal is also disproportionate to the alleged charge and the same is liable to be set aside. Order of dismissal passed by the management is a colourable exercise of power to get infructuous the suit pending before the Court of Ms. Pamel Preet Kaur Grewal, Civil Judge, Junior Division, Chandigarh titled as **Kalinda (Peon) Versus Management Committee, DAV Model School etc.** which was pending for 03.11.2014. At the time of dismissal of her services, the workman was posted as Peon at DAV Model School, Sector 15-A, Chandigarh and was drawing carry home salary of Rs. 11,771/-. Ultimately, it is prayed that the workman be reinstated with continuity of service, full back wages and other service benefits.

3. The management contested the case of the workman and filed written statement that the workman was charge sheeted for grave and serious misconduct. The charges against the workman stood proved in the departmental inquiry and it was only after considering reply/comments of the workman to the inquiry report, which were not found satisfactory that the workman was dismissed from the service by the management. The workman was provided number of opportunities to defend her case through a co-employee of the DAV Model School, Sector 15-A, Chandigarh during the course of inquiry proceedings but she did not bring any co-employee to assist her in the inquiry proceedings and wanted representation by Shri G. S. Gors, President, Centre of India Trade Unions, Chandigarh was not allowed by the Inquiry officer on strong objection by the management's representative/Presenting Officer as there being no such provision under the existing rules. The workman was working as Peon with management No.2 i.e. DAV Model School, Sector 15-A, Chandigarh and governed by the Code of Conduct for Employees of DAV Schools and Disciplinary Proceedings & Appeal contained in Chapter 21 and 22 respectively in the Administrative Manual of DAV College Managing Committee, New Delhi wherein there is no provision for a workman to be represented in the departmental proceedings by an office bearer/professional trade union leader of the Trade Union of which she is a member. The workman wilfully disassociated herself from the inquiry proceedings with *mala fide* intention in spite of number of opportunities given to her by the Inquiry Officer to defend her case through a co-employee. The principles of natural justice do not postulate a right to be represented or assisted by a lawyer or a professional trade union leader in the departmental proceedings. The law laid down by the Hon'ble Supreme Court of India in **Bharat Petroleum Corporation Limited Versus Maharashtra General Kamgar Union & Others** is fully attracted to the facts of the present case, in which it is held that the basic principle is that an employee has no right to representation in the departmental proceedings by another or a lawyer unless the service rules specifically provide for the same. The Hon'ble Supreme Court further held that this right provided in a restricted way only with a choice from the co-worker working in the same establishment cannot be held to be contrary to the Model Standing Orders or unfair so as to vitiate the provision itself or the proceedings. The workman had no defence of her own to refute the serious charges framed against her and she wilfully abandoned the inquiry proceedings with *mala fide* intention. The wilful absence from duty does not entitle the workman for salary for the absence period. The workman while wilfully absenting himself from duty breached the code of conduct as specifically provided in the rules and liable for punishment. The workman was dismissed from service after holding proper, fair and impartial departmental inquiry. The findings of the Inquiry Officer are based on evidence and the charges against the workman stood proved in the inquiry proceedings. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of his case and denied the averments made in the written statement. From the pleadings of the parties, following issues were framed:—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Mrs. Sunanda Maini—TGT as MW1 and Mrs. Sunita Saroha—Post Graduate Teacher as MW2. Learned representative for the management closed the evidence.

6. I have heard the learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

#### ISSUE NO. 1:

7. Onus to prove this issue was on the workman and in order to prove her case the workman examined herself as AW1 who deposed that she was appointed as Peon on 19.12.2007 on *ad hoc* basis for one year and after that her services were regularised by the management. The management took action

against her in prejudiced manner without affording any opportunity to defend herself as she was not allowed to take assistance of expert person even though the request was made by herself to the Inquiry Officer stating that she was unable to defend herself as the proceedings are of technical nature. She further deposed that denial of her request by the Inquiry Officer is against the principles of law and the bye-laws on which the Inquiry Officer is relying is arbitrary. Copy of the application 09.07.2014 is Exhibit 'W1/1'. Copy of reply of management dated 09.07.2014 Exhibit 'W1/2'. She submitted another application dated 15.07.2014 for allowing the services of Shri M. S. Gorsri on the ground of notification of Chandigarh Administration. Copy of application dated 15.07.2014 is Exhibit 'W1/3' and copy of notification dated 02.02.1978 Exhibit 'W1/4' and copy of order dated 15.07.2014 by Inquiry Officer is Exhibit 'W1/5'. She further deposed that she moved to the Civil Court so the management during the pendency of the Civil suit passed the dismissal order and she was dismissed from service on 30.09.2014. She has completed more than 240 days of continuous service without any break in the preceding year and without holding any inquiry into the charges levelled against herself. She cannot be dismissed from service. The inquiry conducted by the management is not proper as she was not provided with the proper assistance of the professional trade union leader to which the workman was associated nor she was provided assistance of any employee so the Inquiry Officer was not fair and was biased in favour of the management and it has prejudiced the entire proceedings. She further deposed that in Union Chandigarh the Home Secretary *vide* its notification notified the service rules applicable to the Union Territory Chandigarh so assistance of the Trade Union Leader can be taken as provided under the rules. Copy of rules applicable in Union Territory Chandigarh is Exhibit 'W1/4'.

8. Learned representative for the workman has argued that the workman has completed more than six years and nine months service and had completed 240 days continuous service without any break in the preceding year. He further argued that inquiry conducted by the management was not proper as she was not provided assistance of professional trade union leader to which he was associated so the inquiry was conducted without hearing herself is illegal and the principles of natural justice has not been followed by the management. He further argued that the Inquiry Officer has misinterpreted the authority of the Hon'ble Supreme Court of India in case '**Bharat Petroleum Corporation Limited Versus Maharashtra General Kamgar Union**'. He prayed for allowing reinstatement of the workman with continuity of service and full back wages.

9. On the other hand, the management has examined Mrs. Sunanda Maini as MW1, who deposed that she was appointed as Presenting Officer to represent the management in the domestic inquiry conducted by Shri Jatinder Deep Singh-Inquiry Officer against the workman. Notice of the inquiry issued by the Inquiry Officer was duly received by the workman. Entire inquiry proceedings were conducted in his presence. Evidence of the management witnesses were recorded by the Inquiry Officer. The inquiry proceedings were conducted by the Inquiry officer in five sessions i.e. 09.07.2014, 15.07.2014, 19.07.2014, 24.07.2014 and 31.07.2014. The workman was present during the course of inquiry proceedings on 31.07.2014 but refused to put her signature. The workman was asked number of times to bring any co-employee of the school to assist her and defend her case but she neither defended her case through co-employee of the school nor herself participated in the inquiry proceedings and wilfully disassociated herself from the inquiry proceedings. She further deposed that during the last session of the inquiry proceedings i.e. on 31.07.2014, the workman categorically stated before the Inquiry officer in her presence that she neither wants to participate in the proceedings nor she wants to say anything in her defence. The employee of DAV Model School, Sector 15-A, Chandigarh including the workman are governed by the Code of Conduct for Employees of DAV Schools contained in Administrative Manual of DAV College Managing Committee, New Delhi Exhibit 'MW1/21'. MW2 Mrs. Sunita Saroha deposed that she is working as Post Graduate Teacher in DAV Model School, Sector 15-A, Chandigarh since 07.01.1987 and she know the workman since 19.12.2007, when she joined DAV Model School, Sector 15-A, Chandigarh. The workman was charge sheeted for grave and serious misconduct and was dismissed from service after holding departmental inquiry. Notice of the



inquiry issued by the Inquiry Officer was duly received by the workman. The workman remained present during the course of inquiry proceedings conducted on 09.07.2014, 15.07.2014, 19.07.2014, 24.07.2014 and 31.07.2014 and also put her signature on the inquiry proceedings. The workman was present during the course of inquiry proceedings on 31.07.2014 but she refused to put her signature. The workman was asked number of times to bring any co-employee of the school to assist her and defend her case as recorded in the inquiry proceedings but she neither defended her case through co-employee of the school nor herself participated in the inquiry proceeding and wilfully disassociated herself from the inquiry proceedings. The employee of DAV Model School, Sector 15-A, Chandigarh including the workman are governed by the Code of Conduct for Employees of DAV Schools contained in Administrative Manual of DAV College Managing Committee, New Delhi Exhibit 'MW1/21'. In the Code of Conductor

10. Learned representative for the management has argued that the workman was charge sheeted for grave and serious misconduct and she was charge sheeted and written explanation was called and after taking the written explanation charges framed against her. Her explanation to the charges framed against her was duly considered and was not found satisfactory. The charges against the workman stood proved in the departmental inquiry and the management agreeing with the findings of the Inquiry Officer dismissed the workman from service. He further argued that the workman who had been working as Peon with management No.2 and governed by Code of Conduct for Employees of DAV Schools and Disciplinary Proceedings & Appeal contained in the Administrative Manual of DAV College Managing Committee wherein there is no provision for a workman to be represented in departmental proceedings by an office bearer / professional trade union leader of the Trade Union of which she is a member. He relied upon authority **Bharat Petroleum Corporation Limited Versus Maharashtra General Kamgar Union & Others, 1999 (1) SCC 626**. He further argued that the workman remained present during the course of inquiry proceedings and also put her signatures on the inquiry proceedings. She was also present during the course of inquiry proceedings on 31.07.2014 but she refused to put her signature on the inquiry proceedings. The workman did not cooperate in the inquiry proceedings. Neither she defended her case through co-employee of the school nor herself participated in the inquiry proceedings and willfully disassociated herself and abandoned the inquiry proceedings so she was proceeded against *ex parte* in departmental inquiry. He prayed for dismissal of claim of the workman.

11. After carefully considering the rival contention of both the sides, I find that admittedly the workman was working with the management No.2 as Peon. Length of service the workman is nowhere disputed. Only grudge of the workman that she was terminated from the services without holding any fair & proper inquiry and she was not given the assistance of professional trade union leader. The Inquiry Officer misinterpreted the authority of Hon'ble Supreme Court of India titled **Bharat Petroleum Corporation Limited Versus Maharashtra General Kamgar Union & Others (supra)** but from the perusal of the evidence of the workman as well as management read as a whole it is crystal clear that the charge bearing No.176/P-71/2014-15, dated 16.06.2014 Exhibit 'MW1/22' was served upon the workman. The workman was called upon to submit her written submissions to the charge sheet framed against. Her explanation to the charges framed against her Exhibit 'MW1/23' were considered carefully by the management but the same was not found satisfactory. Notice of the inquiry issued by the Inquiry Officer was duly received by the workman. The workman was provided number of opportunities to bring co-employee of school but the workman had not produced any co-employee to defend her case. The workman remained present during the course of inquiry proceedings and also put her signatures on the inquiry proceedings. She did not cooperate in the inquiry proceedings. She neither defended herself through co-employee nor participated in the inquiry proceedings and later on proceeded against *ex parte*. The workman while stepping into the witness box as AW1 during the cross-examination admitted that that it is correct that notice of domestic inquiry Exhibit 'MX' was issued by the Inquiry Officer which was personally received by her under her signature on 03.07.2014. It is also correct that she was present in the first session of domestic inquiry conducted on 09.07.2014. Nobody was ready to help her against the Principal so she neither participated

in the inquiry nor brought any co-employee of the institution to defend herself in her case. She further deposed that in the entire inquiry proceedings no co-employee of the institution was present to defend her case. She stated that she did not know whether the Inquiry Officer informed her on the last date of inquiry that if she did not bring any co-employee of the institution to defend her case in the inquiry will be decided *ex parte*. On the other hand the management has examined MW1 who was the Presenting Officer during the inquiry proceedings who proved the inquiry proceedings and MW2 also deposed in favour of management with regard to the charge sheet and misconduct of the workman. Hence, the inquiry conducted against the workman is proper.

12. As regards the authority **Bharat Petroleum Corporation Limited Versus Maharashtra General Kamgar Union & Others** (*supra*) is concerned in which it is clearly held that in the departmental proceedings representation by co-worker in the departmental proceedings, the object is to be introduce uniformity of terms & conditions of the same category of workers. The basis principle is that an employee has no right to representation in the departmental proceedings by another person or a lawyer unless the service rules specifically provide for the same. This right provided in a restricted way only with a choice from the co-workers working in the same establishment, cannot be held to be contrary to the model standing orders or unfair so as to vitiate the provision itself or the proceedings. Hence the workman has failed to prove on file how this citation is not applicable in the inquiry conducted in her case as per evidence DAV Model School, Sector 15, Chandigarh is governed by Code of Conduct for Employees of DAV Schools and Disciplinary Proceedings & Appeal contained in Administrative Manual of DAV College Managing Committee, New Delhi Exhibit 'MW1/21.

13. In the light of discussion made above, it is held that the proper & fair inquiry has been conducted against the workman before terminating her services and her services were terminated legally by the management after holding proper. This issue is decided against the workman and in favour of the management.

**RELIEF :**

14. In the light of findings on the issue above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

Dated: 21-10-2019.

(Sd.). . . .,

(ANSHUL BERRY),

PRESIDING OFFICER,  
Industrial Tribunal & Labour Court,  
Union Territory, Chandigarh.  
UID No.PB0095.

Secretary Labour,  
Chandigarh Administration.

CHANDIGARH ADMINISTRATION  
HOME DEPARTMENT  
LABOUR & EMPLOYMENT BRANCH

**Notification**

The 17th October, 2019

**No. 12/7/30-HII(2)-2019/17030.**—Whereas the poll in connection with General Election to Legislative Assembly of Haryana is to be held on 21st October, 2019.

And Whereas it is considered necessary to provide opportunity to the public to exercise their right to franchise ;

Now, therefore, in exercise of the powers conferred under Section 65 of the Factories Act, 1948 (Act No. LXIII of 1948) and under provision to sub-section (i) of Section 10 of the Punjab Shops and Commercial Establishments Act, 1958 (Punjab Act No. 15 of 1958) as applicable to the Union Territory, Chandigarh, the Advisor to the Administrator, Union Territory, Chandigarh, hereby declares that all the Factories located in Union Territory, Chandigarh shall observe the 21st October, 2019 (Monday) as a Special Casual Leave on account of General Election to Legislative Assembly of Haryana, 2019 to enable all those electors including casual workers who are registered voters in any of the constituency of Haryana to enable them to exercise their franchise in ensuing General Election to Legislative Assembly of Haryana, 2019 which is scheduled to be held on 21.10.2019. He/she would be entitled to get benefit of a paid holiday extended Under Section 135-B of the Representation of the People Act, 1951.

Secretary,  
Department of Labour & Employment,  
Chandigarh Administration.

## CHANGE OF NAME

I, Bhawna, w/o Mahesh Kumar, r/o # 3163/2, Sector 56, Palsora, Chandigarh, have changed my name from Bhawna to Renu Bala.

[116—1]

I, Vinod, s/o Siri Ram, # 5517/1, Modern Housing Complex, Manimajra, Chandigarh, have changed my name to Vinod Kumar.

[117—1]

I, Radhesh Dewett, s/o S.S. Dewett, r/o # 3168-A, Sector 24-D, Chandigarh, have changed my minor son name from Divyansh to Divyansh Vashisht.

[118—1]

*"No legal responsibility is accepted for the contents of publication of advertisements/public notices in this part of the Chandigarh Administration Gazette. Persons notifying the advertisements/ public notices will remain solely responsible for the legal consequences and also for any other misrepresentation etc. "*